

State of Arizona
House of Representatives
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 193

HOUSE BILL 2348

AN ACT

AMENDING SECTIONS 28-4451 AND 28-4460, ARIZONA REVISED STATUTES; RELATING TO
MOTOR VEHICLE DEALERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 28-4451, Arizona Revised Statutes, is amended to
3 read:

4 28-4451. Product liability; warranty obligations; audits;
5 vehicle exports

6 A. Each manufacturer shall file with the director a copy of the
7 delivery and preparation obligations required to be performed by a NEW MOTOR
8 VEHICLE dealer before delivery of new motor vehicles to buyers. These
9 delivery and preparation obligations constitute the NEW MOTOR VEHICLE
10 dealer's only responsibility for the product liability as between the NEW
11 MOTOR VEHICLE dealers and the manufacturer. THE NEW MOTOR VEHICLE DEALER
12 SHALL FURNISH THE BUYER OF A NEW MOTOR VEHICLE WITH A SIGNED COPY OF THE
13 MANUFACTURER'S OR DISTRIBUTOR'S DELIVERY AND PREPARATION REQUIREMENTS
14 INDICATING THAT ALL OF THE REQUIREMENTS HAVE IN FACT BEEN PERFORMED.

15 B. Any mechanical, body or parts defects arising from any express or
16 implied warranties of the manufacturer constitute the manufacturer's product
17 or warranty liability.

18 C. The manufacturer OR DISTRIBUTOR shall ~~reasonably~~ compensate an
19 authorized NEW MOTOR VEHICLE dealer who performs work to rectify the
20 manufacturer's OR DISTRIBUTOR'S ~~product or~~ warranty ~~defects~~ OBLIGATIONS,
21 RECALL OBLIGATIONS or delivery and preparation obligations.

22 ~~D. The dealer shall furnish the purchaser of a new vehicle with a~~
23 ~~signed copy of the manufacturer's delivery and preparation requirements~~
24 ~~indicating that all of the requirements have in fact been performed.~~

25 ~~E. The manufacturer shall pay the cost of the manufacturer's delivery,~~
26 ~~warranty and preparation requirements.~~

27 D. THE COMPENSATION THAT THE MANUFACTURER OR DISTRIBUTOR PAYS TO A NEW
28 MOTOR VEHICLE DEALER FOR DIAGNOSTIC WORK, REPAIR SERVICE AND LABOR SHALL BE
29 FAIR AND REASONABLE AND, AT THE OPTION OF THE NEW MOTOR VEHICLE DEALER, MAY
30 BE DETERMINED PURSUANT TO SUBSECTION E OF THIS SECTION. TIME ALLOWANCES FOR
31 THE DIAGNOSIS AND PERFORMANCE OF WARRANTY WORK AND SERVICE SHALL BE
32 REASONABLE AND ADEQUATE FOR THE WORK OR SERVICES TO BE PERFORMED. THE
33 COMPENSATION THAT THE MANUFACTURER OR DISTRIBUTOR PAYS TO THE NEW MOTOR
34 VEHICLE DEALER FOR PARTS USED IN WARRANTY OR RECALL RELATED SERVICE SHALL BE
35 FAIR AND REASONABLE AND, AT THE OPTION OF THE NEW MOTOR VEHICLE DEALER, MAY
36 BE DETERMINED PURSUANT TO SUBSECTION E OF THIS SECTION.

37 E. THE NEW MOTOR VEHICLE DEALER MAY DECLARE THE RETAIL RATES THAT IT
38 CUSTOMARILY CHARGES FOR PARTS OR LABOR OR BOTH PARTS AND LABOR BY SUBMITTING
39 TO THE MANUFACTURER OR DISTRIBUTOR THE LESSER OF ONE HUNDRED SEQUENTIAL
40 NONWARRANTY CUSTOMER PAID SERVICE REPAIR ORDERS OR NINETY CONSECUTIVE DAYS OF
41 CUSTOMER PAID SERVICE REPAIR ORDERS FOR WARRANTY-LIKE REPAIRS MADE NOT MORE
42 THAN ONE HUNDRED EIGHTY DAYS BEFORE THE SUBMISSION. THE NEW MOTOR VEHICLE
43 DEALER'S RETAIL LABOR RATE SHALL BE DETERMINED BY DIVIDING THE AMOUNT OF THE
44 DEALER'S TOTAL LABOR SALES CONTAINED IN THE SUBMITTED REPAIR ORDERS BY THE
45 TOTAL NUMBER OF LABOR HOURS THAT GENERATED THOSE SALES. THE NEW MOTOR
46 VEHICLE DEALER'S RETAIL RATE FOR PARTS SHALL BE A PERCENTAGE DETERMINED BY

1 DIVIDING THE TOTAL SALES FOR PARTS IN THE SUBMITTED REPAIR ORDERS BY THE NEW
2 MOTOR VEHICLE DEALER'S TOTAL COST FOR THOSE PARTS, MINUS ONE, AND THEN
3 MULTIPLIED BY ONE HUNDRED TO PRODUCE A PERCENTAGE. DECLARED RATES ARE
4 PRESUMED TO BE FAIR AND REASONABLE EXCEPT THAT A MANUFACTURER OR DISTRIBUTOR,
5 WITHIN THIRTY DAYS AFTER RECEIVING THE NEW MOTOR VEHICLE DEALER'S SUBMISSION,
6 MAY REBUT THE PRESUMPTION BY REASONABLY SUBSTANTIATING THAT THE RATE OR RATES
7 ARE INACCURATE OR UNREASONABLE COMPARED TO OTHER SIMILARLY SITUATED SAME LINE
8 MAKE NEW MOTOR VEHICLE DEALERS IN THE STATE. THE NEW MOTOR VEHICLE DEALER'S
9 DECLARED PARTS, LABOR OR BOTH PARTS AND LABOR RATES SHALL GO INTO EFFECT
10 THIRTY DAYS FOLLOWING THE MANUFACTURER'S OR DISTRIBUTOR'S RECEIPT OF THE
11 DECLARATION, UNLESS THE MANUFACTURER OR DISTRIBUTOR TIMELY SENDS A REBUTTAL
12 OF THE DECLARED RATE OR RATES TO THE NEW MOTOR VEHICLE DEALER. IF ANY OF THE
13 DECLARED RATES ARE REBUTTED, THE MANUFACTURER OR DISTRIBUTOR SHALL PROPOSE AN
14 ADJUSTMENT OF THE REBUTTED RATE OR RATES WITHIN THIRTY DAYS AFTER RECEIVING
15 THE NEW MOTOR VEHICLE DEALER'S SUBMISSION. IF THE NEW MOTOR VEHICLE DEALER
16 DOES NOT AGREE WITH THE PROPOSED ADJUSTED RATE OR RATES, IT MAY FILE A
17 PROTEST WITH THE DIRECTOR WITHIN THIRTY DAYS AFTER RECEIPT OF THE
18 MANUFACTURER'S OR DISTRIBUTOR'S PROPOSAL. IF A PROTEST IS TIMELY FILED, THE
19 DIRECTOR SHALL INFORM THE MANUFACTURER OR DISTRIBUTOR THAT A TIMELY PROTEST
20 HAS BEEN FILED AND THAT A HEARING WILL BE HELD ON THE PROTEST IF ANY
21 AVAILABLE MANUFACTURER OR DISTRIBUTOR MEDIATION OPPORTUNITY HAS BEEN USED AND
22 WAS UNSUCCESSFUL IN REACHING AN AGREEMENT BETWEEN THE PARTIES.

23 F. IN CALCULATING THE RETAIL RATE OR RATES THAT A NEW MOTOR VEHICLE
24 DEALER CUSTOMARILY CHARGES FOR PARTS OR LABOR, THE FOLLOWING WORK MAY NOT BE
25 INCLUDED IN THE CALCULATION:

- 26 1. REPAIRS FOR MANUFACTURER OR DISTRIBUTOR SPECIAL EVENTS, SPECIALS OR
27 PROMOTIONAL DISCOUNTS FOR RETAIL CUSTOMER REPAIRS.
- 28 2. PARTS SOLD AT WHOLESALE.
- 29 3. ENGINE ASSEMBLIES AND TRANSMISSION ASSEMBLIES, IF THE NEW MOTOR
30 VEHICLE DEALER AGREES TO BE COMPENSATED FOR THOSE ASSEMBLIES WITH A HANDLING
31 CHARGE INSTEAD OF A RETAIL PARTS MARKUP.
- 32 4. ROUTINE MAINTENANCE NOT COVERED UNDER ANY RETAIL CUSTOMER WARRANTY,
33 SUCH AS FLUIDS, FILTERS AND BELTS NOT PROVIDED IN THE COURSE OF REPAIRS.
- 34 5. NUTS, BOLTS, FASTENERS AND SIMILAR ITEMS THAT DO NOT HAVE
35 INDIVIDUAL PART NUMBERS.
- 36 6. VEHICLE RECONDITIONING.

37 ~~F.~~ G. The manufacturer, factory branch, distributor or distributor
38 branch may reasonably and periodically audit a new motor vehicle dealer to
39 determine the validity of paid claims for dealer compensation or any
40 charge-backs for warranty parts or service compensation. Audits shall only
41 be for the ~~six~~ TWELVE month period immediately following the date of the
42 payment. This limitation does not apply if the manufacturer ~~reasonably~~
43 ~~suspects fraud~~, FACTORY BRANCH, DISTRIBUTOR OR DISTRIBUTOR BRANCH REASONABLY
44 SUSPECTS FRAUD. AS A RESULT OF AN AUDIT THAT IS AUTHORIZED BY THIS
45 SUBSECTION, THE MANUFACTURER OR DISTRIBUTOR HAS THE RIGHT TO CHARGE BACK TO
46 THE NEW MOTOR VEHICLE DEALER THE AMOUNT OF ANY PREVIOUSLY PAID CLAIM AFTER

1 THE NEW MOTOR VEHICLE DEALER HAS HAD NOTICE AND AN OPPORTUNITY TO PARTICIPATE
2 IN ANY AVAILABLE MANUFACTURER OR DISTRIBUTOR MEDIATION PROCESSES AND ALL
3 LEGAL APPEALS HAVE BEEN EXHAUSTED IF MEDIATION FAILED TO RESULT IN AN
4 AGREEMENT.

5 ~~G.~~ H. The manufacturer, factory branch, distributor or distributor
6 branch shall reserve the right to reasonable periodic audits to determine the
7 validity of paid claims for dealer compensation or any charge-backs for
8 consumer or dealer incentives. Audits shall only be for a one year period
9 immediately following the date of the payment. This limitation does not
10 apply if the ~~manufacturer reasonably suspects fraud.~~ MANUFACTURER, FACTORY
11 BRANCH, DISTRIBUTOR OR DISTRIBUTOR BRANCH REASONABLY SUSPECTS FRAUD. AS A
12 RESULT OF AN AUDIT AUTHORIZED BY THIS SUBSECTION, THE MANUFACTURER OR
13 DISTRIBUTOR HAS THE RIGHT TO CHARGE BACK TO THE NEW MOTOR VEHICLE DEALER THE
14 AMOUNT OF ANY PREVIOUSLY PAID CLAIM AFTER THE NEW MOTOR VEHICLE DEALER HAS
15 HAD NOTICE AND AN OPPORTUNITY TO PARTICIPATE IN ANY AVAILABLE MANUFACTURER OR
16 DISTRIBUTOR MEDIATION PROCESSES AND ALL LEGAL APPEALS HAVE BEEN EXHAUSTED IF
17 MEDIATION FAILED TO RESULT IN AN AGREEMENT.

18 I. ALL CLAIMS BY NEW MOTOR VEHICLE DEALERS UNDER THIS SECTION FOR
19 LABOR AND PARTS AND ALL CLAIMS FOR COMPENSATION RELATIVE TO ANY SALES
20 INCENTIVE PROGRAMS SHALL BE PAID WITHIN THIRTY DAYS AFTER APPROVAL BY THE
21 MANUFACTURER OR DISTRIBUTOR SUBJECT TO THE MANUFACTURER'S OR DISTRIBUTOR'S
22 RIGHT TO AUDIT THE CLAIMS PROVIDED IN SUBSECTION G OR H OF THIS SECTION. ALL
23 CLAIMS SHALL BE EITHER APPROVED OR DISAPPROVED WITHIN THIRTY DAYS AFTER
24 RECEIPT ON FORMS AND IN THE MANNER SPECIFIED BY THE MANUFACTURER OR
25 DISTRIBUTOR. ANY CLAIM NOT DISAPPROVED IN WRITING OR BY MEANS OF ELECTRONIC
26 TRANSMISSION WITHIN THIRTY DAYS AFTER RECEIPT ARE DEEMED APPROVED AND PAYMENT
27 MUST BE MADE WITHIN THIRTY DAYS AFTER APPROVAL.

28 J. IF A MANUFACTURER OR DISTRIBUTOR FURNISHES A PART OR COMPONENT TO A
29 NEW MOTOR VEHICLE DEALER, AT NO COST, TO USE IN PERFORMING REPAIRS UNDER A
30 RECALL, CAMPAIGN SERVICE ACTION OR WARRANTY REPAIR, THE MANUFACTURER OR
31 DISTRIBUTOR SHALL COMPENSATE THE DEALER FOR THE PART OR COMPONENT IN THE SAME
32 MANNER AS WARRANTY PARTS COMPENSATION UNDER THIS SECTION BY COMPENSATING THE
33 DEALER THE RETAIL PARTS RATE ON THE WHOLESALE COST FOR THE PART OR COMPONENT
34 AS LISTED IN THE MANUFACTURER'S OR DISTRIBUTOR'S PRICE SCHEDULE LESS THE
35 WHOLESALE COST FOR THE PART OR COMPONENT.

36 K. A MANUFACTURER OR DISTRIBUTOR MAY NOT REQUIRE A NEW MOTOR VEHICLE
37 DEALER TO ESTABLISH THE RETAIL RATES CUSTOMARILY CHARGED BY THE DEALER FOR
38 PARTS OR LABOR BY AN UNDULY BURDENSOME OR TIME CONSUMING METHOD OR BY
39 REQUIRING INFORMATION THAT IS UNDULY BURDENSOME OR TIME CONSUMING TO PROVIDE
40 CALCULATIONS, INCLUDING PART-BY-PART OR TRANSACTION-BY-TRANSACTION
41 CALCULATIONS. A NEW MOTOR VEHICLE DEALER MAY NOT DECLARE ANY NEW RETAIL RATE
42 MORE THAN ONCE IN ANY TWELVE MONTH PERIOD. A MANUFACTURER OR DISTRIBUTOR MAY
43 USE THE REPAIR ORDERS SUBMITTED BY A NEW MOTOR VEHICLE DEALER UNDER
44 SUBSECTION E OF THIS SECTION TO VALIDATE ANY OR ALL OF A NEW MOTOR VEHICLE
45 DEALER'S CURRENT WARRANTY REIMBURSEMENT RATES OR REQUIRE A NEW MOTOR VEHICLE
46 DEALER, NOT MORE THAN ONCE EVERY TWELVE MONTHS, TO SUBMIT REPAIR ORDERS

1 PURSUANT TO THIS SECTION TO VALIDATE THE NEW MOTOR VEHICLE DEALER'S RETAIL
2 RATE OR RATES. IF A MANUFACTURER OR DISTRIBUTOR FINDS THAT ANY OF A NEW MOTOR
3 VEHICLE DEALER'S RETAIL RATES HAVE DECLINED, THE MANUFACTURER OR DISTRIBUTOR
4 MAY PROSPECTIVELY REDUCE THE RESPECTIVE WARRANTY REIMBURSEMENT RATE.

5 L. IF THE NEW MOTOR VEHICLE DEALER HAS OTHERWISE PROPERLY SUBMITTED
6 THE CLAIM PURSUANT TO THE MANUFACTURER'S OR DISTRIBUTOR'S WARRANTY OR
7 INCENTIVE PROGRAM GUIDELINES, A MANUFACTURER OR DISTRIBUTOR MAY NOT DENY A
8 CLAIM BY A NEW MOTOR VEHICLE DEALER FOR REIMBURSEMENT OF ANY WARRANTY PARTS
9 OR SERVICE COMPENSATION OR ANY CONSUMER OR DEALER INCENTIVE COMPENSATION
10 BASED SOLELY ON A NEW MOTOR VEHICLE DEALER'S INCIDENTAL FAILURE TO COMPLY
11 WITH A SPECIFIC CLAIM PROCESSING REQUIREMENT THAT DOES NOT PUT INTO QUESTION
12 THE LEGITIMACY OF THE CLAIM. IF A CLAIM IS REJECTED FOR SUCH AN INCIDENTAL
13 REQUIREMENT THE NEW MOTOR VEHICLE DEALER MAY CORRECT OR COMPLETE AND RESUBMIT
14 A PREVIOUSLY SUBMITTED WARRANTY OR INCENTIVE CLAIM FOR A PERIOD OF UP TO
15 SIXTY DAYS FOLLOWING THE NEW MOTOR VEHICLE DEALER'S RECEIPT OF FIRST NOTICE
16 OF THE FAILURE FROM THE MANUFACTURER OR DISTRIBUTOR. A MANUFACTURER OR
17 DISTRIBUTOR IS NOT REQUIRED TO APPROVE ANY SUCH WARRANTY OR INCENTIVE CLAIM
18 IF ALL CLAIM PROCESSING REQUIREMENTS ARE NOT COMPLIED WITH BY THE NEW MOTOR
19 VEHICLE DEALER WITHIN THE TIME PERIODS PRESCRIBED BY THIS SECTION.

20 ~~H-~~ M. If a NEW MOTOR VEHICLE dealer sells or leases a vehicle to a
21 customer who exports the vehicle to a foreign country, unless the
22 manufacturer, DISTRIBUTOR OR IMPORTER proves that the NEW MOTOR VEHICLE
23 dealer knew or reasonably should have known that the vehicle would be
24 exported, a manufacturer shall not do any of the following:

25 1. Refuse to sell, allocate or deliver new motor vehicles to the NEW
26 MOTOR VEHICLE dealer.

27 2. Charge back to or withhold payments or other things of value from
28 the NEW MOTOR VEHICLE dealer that the NEW MOTOR VEHICLE dealer otherwise
29 would be eligible for under an incentive program or contest.

30 3. Prevent a NEW MOTOR VEHICLE dealer from participating in any sales
31 promotion or program.

32 4. Take an adverse action against a NEW MOTOR VEHICLE dealer,
33 including reducing vehicle allocations or terminating or threatening to
34 terminate a dealer.

35 ~~H-~~ N. There is a rebuttable presumption that the NEW MOTOR VEHICLE
36 dealer described in subsection ~~H-~~ M OF THIS SECTION did not know or should
37 not have reasonably known that the vehicle described in subsection ~~H-~~ M OF
38 THIS SECTION would be exported. The presumption may be rebutted by a
39 preponderance of the evidence that the NEW MOTOR VEHICLE dealer knew or
40 should have reasonably known that the vehicle was to be exported.

41 O. IF A TIMELY PROTEST IS FILED UNDER SUBSECTION E OF THIS SECTION,
42 THE DIRECTOR SHALL:

43 1. ENTER AN ORDER FIXING THE TIME AND PLACE OF A HEARING ON THE
44 PROTEST. THE HEARING SHALL BE HELD WITHIN SEVENTY-FIVE DAYS AFTER THE DATE
45 OF THE ORDER.

2. SEND BY CERTIFIED MAIL A COPY OF THE ORDER TO THE DEALER AND THE MANUFACTURER.

3. APPOINT A MEMBER OF THE ARIZONA STATE BAR WHO SHALL BE DESIGNATED AS AN ADMINISTRATIVE LAW JUDGE TO CONDUCT THE HEARING AND WHO SHALL BE COMPENSATED UNDER A CONTRACTUAL RELATIONSHIP.

P. PREHEARING DISCOVERY SHALL BE CONDUCTED PURSUANT TO THE ARIZONA RULES OF CIVIL PROCEDURE.

Q. EVIDENCE THAT WOULD BE ADMISSIBLE UNDER THE ISSUES IN SUCH AN ACTION IN A STATE OR FEDERAL COURT IS ADMISSIBLE IN A HEARING HELD BY THE ADMINISTRATIVE LAW JUDGE. THE ADMINISTRATIVE LAW JUDGE SHALL REASONABLY APPORTION ALL COSTS BETWEEN THE PARTIES, INCLUDING COMPENSATION FOR THE ADMINISTRATIVE LAW JUDGE'S SERVICES. THE ADMINISTRATIVE LAW JUDGE MAY:

1. ISSUE SUBPOENAS.

2. ADMINISTER OATHS.

3. COMPEL THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF BOOKS, PAPERS, DOCUMENTS AND ALL OTHER EVIDENCE.

4. APPLY TO THE SUPERIOR COURT IN THE COUNTY IN WHICH THE HEARING IS HELD FOR A COURT ORDER ENFORCING THIS SECTION.

R. A TRANSCRIPT OF THE TESTIMONY OF ALL WITNESSES TAKEN AT THE HEARING SHALL BE MADE AND PRESERVED. WITHIN FORTY-FIVE DAYS AFTER THE HEARING THE ADMINISTRATIVE LAW JUDGE SHALL MAKE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ENTER A FINAL ORDER.

S. A PARTY TO THE HEARING BEFORE THE ADMINISTRATIVE LAW JUDGE MAY APPEAL PURSUANT TO TITLE 12, CHAPTER 7, ARTICLE 6. AN APPEAL OF A DECISION OF AN ADMINISTRATIVE LAW JUDGE HAS PREFERENCE OVER OTHER CIVIL MATTERS AND SHALL BE HEARD AT THE EARLIEST PRACTICABLE DATE.

T. AS A CONDITION TO THE APPEAL, THE APPEALING PARTY SHALL FILE A CASH BOND, SUPERSEDEAS BOND OR ITS EQUIVALENT WITH THE DIRECTOR. THE BOND SHALL BE SUFFICIENT IN AMOUNT TO COVER THE DAMAGES INCURRED BY THE PREVAILING PARTY, BUT THE AMOUNT OF THE BOND MAY NOT EXCEED THE LESSER OF FIFTY THOUSAND DOLLARS OR TEN PERCENT OF THE APPEALING PARTY'S NET WORTH. THE APPEALING PARTY MAY FILE ALTERNATIVES TO CASH SUCH AS CERTIFICATES OF DEPOSIT PURCHASED FROM A FINANCIAL INSTITUTION LICENSED TO DO BUSINESS IN THIS STATE PURSUANT TO TITLE 6 OR BONDS OF THE UNITED STATES GOVERNMENT.

Sec. 2. Section 28-4460, Arizona Revised Statutes, is amended to read:

28-4460. Factories; competition or unfair discrimination prohibited; definitions

A. A factory shall not directly or indirectly compete with or unfairly discriminate among its dealers.

B. Competing with or unfair discrimination includes any one of the following:

1. The factory having an ownership interest or franchise interest in, or operating or acting in the capacity of, a new motor vehicle dealer or a used motor vehicle dealer, except that:

(a) A factory is not prohibited from owning or operating as a new motor vehicle dealer for a temporary period if either of the following apply:

1 (i) The temporary period is not more than twelve months during the
2 transition from one dealer to another dealer if the dealership is for sale
3 and is being actively marketed by the factory at a bona fide reasonable price
4 and on reasonable terms and conditions to any independent qualified buyer.

5 (ii) The factory submits evidence that disposition of its interest
6 will result in financial loss to the factory or dealership.

7 The temporary period may be extended in one year increments if either of the
8 requirements of this subdivision are met.

9 (b) A factory is not prohibited from temporarily owning a dealership
10 while in a bona fide relationship with a qualified person. A bona fide
11 relationship with a person who is qualified requires that:

12 (i) The total sales price of the dealership is not less than an amount
13 that is consistent with standard business practices.

14 (ii) The independent qualified person make a substantial unencumbered
15 bona fide initial investment in the dealership that is reasonable and
16 consistent with standard business practices.

17 (iii) The bona fide initial investment of the qualified person is
18 subject to potential loss. The qualified person's percentage share of any
19 potential dealership losses shall not be less than the person's percentage
20 share of ownership of the dealership at the time of the loss.

21 (iv) The qualified person buy substantial portions of the factory's
22 remaining ownership interest in substantial regular periodic payments
23 throughout the acquisition period.

24 (v) The qualified person can expect to acquire and retain full and
25 complete ownership of the dealership within a reasonable period of time that
26 is not longer than ten years and on reasonable terms and conditions that are
27 consistent with standard business practices. The ten year acquisition period
28 may be extended for good cause shown by the qualified person.

29 (vi) During the acquisition period if the qualified person is paid a
30 management fee, the management fee shall be reasonable and consistent with
31 standard business practices for an individual managing a franchise of similar
32 size and volume of sales and leases of vehicles or products.

33 (c) A factory is not prohibited from owning on a permanent basis a
34 minority interest in a dealership if all of the following conditions are
35 satisfied:

36 (i) The interest owned by the factory is not more than forty-five ~~per~~
37 ~~cent~~ PERCENT or the percentage interest actually owned by the factory on
38 January 1, 2000, whichever is less.

39 (ii) Any dealership in which the factory owns the interest shall not
40 be less than seventy-five miles from the nearest dealership of the same
41 line-make in which the factory does not own the interest.

42 (iii) All dealerships in which the factory owns the interest shall not
43 sell or lease more than one of the line-makes of new motor vehicles and parts
44 manufactured by the factory.

45 (iv) All dealerships in which the factory owns the interest shall sell
46 or lease the same line-make of new motor vehicles and parts manufactured by

1 the factory. The dealerships may also sell or lease new motor vehicles and
2 parts of a line-make manufactured by a factory that does not have an
3 ownership interest in the dealership.

4 (v) The factory or an entity in which the factory has the interest
5 must have been licensed in this state as a new motor vehicle dealer on
6 January 1, 2000 selling the line-make of new motor vehicle manufactured by
7 the factory.

8 (vi) The factory must have owned the interest in at least one
9 dealership selling the line-make manufactured by the factory on January 1,
10 2000.

11 (vii) The factory or an entity in which the factory has the interest
12 shall not sell any line-make of new motor vehicle that it was not selling in
13 this state before January 1, 2000.

14 (viii) All automotive related services and financing related to the
15 line-make or the factory owning the interest shall be sold or provided only
16 to owners of vehicles of the line-make, regardless of where the vehicle was
17 purchased, or to any purchasers of any new or used motor vehicles purchased
18 from a dealership in which the factory has an interest. This item shall not
19 preclude that dealership from selling or providing any nonwarranty repairs or
20 maintenance on motor vehicles of any line-make or warranty repairs or
21 maintenance of any line-make of new motor vehicles sold by the dealership and
22 not manufactured by the factory.

23 (ix) All used motor vehicles of a line-make manufactured by the
24 factory, other than the line-make that the dealership sells or leases new,
25 acquired by the dealership, directly or indirectly from the factory, shall be
26 acquired only at wholesale auction open to dealers of all line-makes
27 manufactured by the factory.

28 2. The factory selling, leasing or providing, or offering to sell,
29 lease or provide, a vehicle or product, service or financing to any retail
30 consumer or lead. This paragraph does not:

31 (a) Prohibit a factory from advertising to sell, lease or provide a
32 vehicle or product, service or financing through its dealers.

33 (b) Prohibit a factory from selling, leasing or providing or offering
34 to sell, lease or provide a vehicle or product, service or financing through
35 its dealers.

36 (c) Prohibit a factory from providing a vehicle or product or service
37 for occasional promotional or charitable uses.

38 (d) Prohibit a factory from selling, leasing or providing a vehicle or
39 product, service or financing to an agency of the federal government.

40 (e) Prohibit a factory from selling or leasing a vehicle or product,
41 service or financing through its dealers to retail consumers who qualify for
42 any reasonable factory sponsored factory employee, factory retiree or factory
43 vendor new vehicle purchase program or any other reasonable similar factory
44 related new vehicle purchase program.

1 (f) Prohibit a factory from providing financing to retail consumers
2 through any used motor vehicle dealer or new motor vehicle dealer of any
3 line-make.

4 (g) Prohibit a factory from providing a loan directly to a person or
5 entity if the loan is for a purpose unrelated to the ownership or leasing of
6 a new motor vehicle or a used motor vehicle not for resale.

7 (h) Prohibit a factory from providing loans directly to used motor
8 vehicle dealers or new motor vehicle dealers of any line-make for any
9 purpose, including working capital, real estate, construction or motor
10 vehicle or parts inventories.

11 (i) Prohibit a factory from arranging or providing emergency roadside
12 service.

13 (j) Prohibit a factory from offering factory sponsored extended
14 service contracts to purchasers of new motor vehicles, provided that:

15 (i) Such offers shall not take place less than ninety days after the
16 date the retail consumer takes delivery of the new motor vehicle.

17 (ii) Such offers are made to retail consumers only at the
18 manufacturer's suggested retail price.

19 (k) Prohibit a factory from selling a lease vehicle to the original
20 lessee pursuant to a purchase option set forth in the lease. Such sale may
21 be a credit sale with the factory as the credit seller and may include the
22 direct sale of extended service contracts at the manufacturer's suggested
23 retail price.

24 (l) Prohibit a factory, at the request of a motor vehicle lessee, from
25 extending a lease of a motor vehicle.

26 (m) Prohibit a factory from offering and approving a retail consumer
27 credit application for the financing or leasing of a motor vehicle provided
28 that both of the following apply:

29 (i) The final transaction takes place through a licensed motor vehicle
30 dealer.

31 (ii) The factory does not establish or quote any interest rate,
32 finance rate or lease rate in association with a credit application.

33 (n) Prohibit a factory from renewing or charging any subscription or
34 connection fees for any in-vehicle electronic wireless communication,
35 information or entertainment services.

36 3. The factory controlling any aspect of the final amount charged, the
37 final sales price or the final lease price for any vehicle or product,
38 trade-in or service offered to retail consumers in a dealer's area of
39 responsibility without the written consent of the dealer. The dealer's
40 consent may be withdrawn on forty-five days' notice without retribution or
41 the threat of retribution from the factory. This paragraph does not prohibit
42 a factory from:

43 (a) Changing dealer cost or establishing any of the following:

44 (i) Manufacturer's suggested retail price pursuant to 15 United States
45 Code section 1232.

46 (ii) Factory's suggested retail price for parts.

1 (iii) Factory's suggested retail price for service.

2 (b) Establishing from time to time reasonable sales, lease or
3 financing promotions of reasonable and limited duration, provided that
4 programs up to a year are presumed to be of reasonable and limited duration.

5 (c) Establishing reasonable standard feature option packages or
6 vehicle option content in any way.

7 (d) Establishing the terms of any vehicle warranty.

8 (e) Establishing reasonable sales, lease or financing terms through
9 its dealers to retail consumers who qualify for any reasonable factory
10 sponsored factory employee, factory retiree or factory vendor new vehicle
11 purchase program or any other reasonable similar factory related new vehicle
12 purchase program.

13 (f) Linking the factory's internet site to internet sites maintained
14 by its dealers or third parties, or to internet sites maintained jointly by
15 the factory and its dealers and made available to all of the factory's
16 dealers of the same line-make, provided that the factory shall not dictate,
17 limit, establish, set or endorse as a basis for a retail transaction any
18 price other than the manufacturer's suggested retail price.

19 (g) Establishing the price at which the lessee of a motor vehicle may
20 purchase or re-lease that motor vehicle on expiration or termination of that
21 lessee's lease.

22 (h) Operating or facilitating a program or system through which
23 individual dealers may provide quotes or offers to individual consumers.

24 4. The factory refusing to unconditionally offer and provide to its
25 same line-make dealers all models, series and editions of new motor vehicles
26 that are publicly advertised for that line-make in Arizona. The failure to
27 deliver any new motor vehicles shall not be considered a violation of this
28 paragraph if the failure is caused by a lack of manufacturing capacity, labor
29 strike, shortage of materials or trade embargo or any other condition over
30 which the factory has no control. A factory may require a dealer to purchase
31 reasonable quantities of advertising materials, purchase reasonable
32 quantities of special tools required to properly service a motor vehicle and
33 undertake reasonable salesperson or service person training related to the
34 motor vehicle as a condition of receiving a motor vehicle. This paragraph
35 does not:

36 (a) Apply to recreational vehicle manufacturers.

37 (b) Prohibit a factory from providing monetary, financial or optional
38 equipment incentives to fleet purchasers for new motor vehicles not for
39 resale.

40 5. The factory denying to any dealer any price reduction, rebate,
41 incentive payment or similar pricing device relating to the sale or offer to
42 sell a new motor vehicle to a dealer, pursuant to a program that
43 discriminates among dealers of the same line-make in Arizona, when the dealer
44 cannot qualify or receive the benefits of the program for reasons other than
45 the dealer's failure to use reasonable effort to qualify and the terms of the

1 program are such that a failure to qualify or receive its benefits would
2 constitute the constructive termination of the dealer.

3 6. The factory failing to provide or direct a lead relating to a
4 particular line-make either:

5 (a) To the dealer with whom the lead has a preexisting relationship.

6 (b) To the dealer of the same line-make that is located closest to
7 where the lead resides, or to the local business address if the lead is a
8 business.

9 (c) To the dealer of the same line-make in whose assigned area of
10 responsibility the lead resides, or the local business address if the lead is
11 a business.

12 (d) According to the lead's voluntary preference.

13 C. Under subsection B, paragraph 6:

14 1. The factory need not provide or direct a lead to a dealer who does
15 not sell the vehicle or product, service or financing in which the lead
16 expresses an interest.

17 2. The factory is responsible only for providing to the dealer
18 information that it possesses concerning the lead.

19 3. The factory is not precluded from providing or directing leads to
20 any other dealer of the same line-make.

21 4. All leads shall be provided or directed in a fair,
22 nondiscriminatory, equitable and timely manner to dealers and, except as
23 provided in subsection D, without charging a fee for those leads.

24 D. Subsection B, paragraph 6 does not apply to any factory sponsored
25 internet-based program specifically designed to provide retail consumers with
26 internet access to dealer quotations on vehicles, products, financing or
27 services, provided that:

28 1. Fees for the program are reasonable and consistent with industry
29 standards.

30 2. Dealer participation is not conditioned on participation in any
31 other program or on ratings derived from customer surveys.

32 E. A MANUFACTURER OR DISTRIBUTOR MAY NOT RECOVER ALL OR ANY PORTION OF
33 ITS COSTS FOR COMPENSATING A DEALER FOR WARRANTY PARTS AND SERVICE, INCLUDING
34 PARTS AND SERVICE ASSOCIATED WITH VEHICLE RECALLS, EITHER BY REDUCTION IN THE
35 AMOUNT DUE THE DEALER OR BY SEPARATE CHARGE, SURCHARGE, ADMINISTRATIVE FEE OR
36 OTHER IMPOSITION. THIS SUBSECTION DOES NOT PROHIBIT A MANUFACTURER OR
37 DISTRIBUTOR FROM INCREASING THE WHOLESALE PRICE OF A VEHICLE OR PART IN THE
38 ORDINARY COURSE OF BUSINESS.

39 ~~E.~~ F. For the purposes of this section:

40 1. "Controlling" means dictating, limiting, establishing, setting or
41 endorsing as a basis for a retail transaction any price other than the
42 manufacturer's suggested retail price.

43 2. "Dealer" or "dealership" means a new motor vehicle dealer or
44 franchisee.

45 3. "Factory":

1 (a) Means a manufacturer, importer or distributor or any legal entity
2 in which a manufacturer, importer or distributor owns a majority interest or
3 has direct or indirect power to direct or cause the direction of the
4 management whether through voting securities, contract or otherwise.

5 (b) Excludes any new motor vehicle dealer, used motor vehicle dealer
6 or trailer manufacturer.

7 (c) Excludes any agent, affiliate, representative or subsidiary that
8 is primarily engaged in the business of rental of passenger and commercial
9 motor vehicles and industrial and construction equipment and activities
10 incidental to that business if all of the following conditions are satisfied:

11 (i) Passenger and commercial motor vehicles sold by the agent,
12 affiliate, representative or subsidiary are limited to used passenger and
13 commercial motor vehicles that have been previously used exclusively and
14 regularly by the agent, affiliate, representative or subsidiary in the
15 conduct of business and used passenger and commercial motor vehicles traded
16 in on motor vehicles sold by the agent, affiliate, representative or
17 subsidiary.

18 (ii) Warranty repairs performed by the agent, affiliate,
19 representative or subsidiary on passenger and commercial motor vehicles are
20 limited to those passenger and commercial motor vehicles that it owns,
21 previously owned or takes in trade.

22 (iii) Motor vehicle financing provided by the agent, affiliate,
23 representative or subsidiary to retail consumers for passenger and commercial
24 motor vehicles is limited to vehicles sold by the agent, affiliate,
25 representative or subsidiary in the conduct of business.

26 4. "Financing":

27 (a) Means the financial service of providing retail consumers the
28 ability to pay for a purchase or lease of a new or used motor vehicle, parts
29 or services over an extended period of time.

30 (b) Does not include the furnishing of credit cards capable of general
31 use in retail transactions or the provision of any loans secured by real
32 estate.

33 5. "Parts":

34 (a) Means all items that are designed to be incorporated within or
35 attached to or used to operate, maintain or service a motor vehicle.

36 (b) Does not include any of the following:

37 (i) Parts purchased or provided for use by professional racing
38 enterprises.

39 (ii) Parts no longer included in the current factory price schedule.

40 (iii) Specialized parts for research vehicles or other similar uses of
41 limited application.

42 (iv) Owners' manuals or repair manuals.

43 (v) Parts that are provided by an automotive recycler in the normal
44 course of business for an automotive recycler.

45 (vi) Motor vehicle keys.

46 6. "Service" means either of the following:

- 1 (a) Motor vehicle warranty and nonwarranty repairs or maintenance,
2 including both parts and labor.
- 3 (b) Extended warranties, vehicle mechanical maintenance insurance and
4 similar vehicle repair service contracts.
- 5 7. "Vehicle or product" means a new motor vehicle, a used motor
6 vehicle or parts.

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